

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

ELITE BOSS TECH INCORPORATED,
11020781 CANADA INC., DANIEL
FAGERBERG LARSEN, ROBERT JAMES
DUTHIE NELSON, SEBASTIAAN JUAN
THEODOOR CRUDEN A/K/A
“LUZYPHER,” JOHN DOE NO. 4 A/K/A
“GOODMAN,” YUNXUAN DENG A/K/A
“YIMOSECAI,” ANTHONY ROBINSON
A/K/A “RULEZZGAME,” EDDIE TRAN
A/K/A “SENTIENT”, CHENZHIJIE CHEN
A/K/A “CHENZHIJIE402, DSOF, CVR
37454303, MARTA MAGALHAES A/K/A
MINDBENDER A/K/A BLUEGIRL, AND
JOHN DOES NO. 9-20,

Defendants.

Case No. 2:21-cv-01112-TL

ORDER GRANTING MOTION TO
SEAL MOTION FOR DEFAULT AND
SUPPORTING DECLARATIONS

[PROPOSED]

This matter having come before the Court upon Plaintiff Bungie, Inc.’s Motion to Seal materials submitted in support of its Motion for Default Against Larsen, to wit: (1) portions of the Declaration of Patrick Schaufuss (the “Schaufuss Declaration”), (2) portions of the Declaration of James Barker (the “Barker Declaration”), (3) portions of the Declaration of Bungie’s technical expert, Steven Guris (the “Guris Declaration”), and (4) those portions of the

1 Motion for Default (the “Brief”) that reference the sealed portions of the Guris, Barker, and
 2 Schaufuss Declarations. Having reviewed the relevant record, the Court GRANTS the motion.

3 When considering whether to seal portions of the Court’s record, a “strong presumption
 4 in favor of access is the starting point.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172,
 5 1178 (9th Cir. 2006). Any records related to motions that are more than tangentially related to
 6 the merits of the underlying action are subject to the “compelling reasons” standard. *Ctr. for*
 7 *Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1099 (9th Cir. 2016). In determining
 8 whether there are compelling reasons to seal, “courts should consider all relevant factors,
 9 including: ‘the public interest in understanding the judicial process and whether disclosure of the
 10 material could result in improper use of the material for scandalous or libelous purposes or
 11 infringement upon trade secrets.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d at 1135
 12 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)).

13 Compelling reasons may exist to seal “trade secrets, marketing strategies, product
 14 development plans, detailed product-specific financial information, customer information,
 15 internal reports and other such materials that could harm a party’s competitive standing . . .” *In*
 16 *re Apple Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD, 2019 WL 1767158, at *2
 17 (N.D. Cal. Apr. 22, 2019). Courts in the Ninth Circuit (and this District in particular) have
 18 recognized that information that describes the internal and confidential information about the
 19 operations of computer hardware and software that is meant to limit access to the hardware’s or
 20 software’s operations, and information on how to circumvent it, generally meets that
 21 “compelling reasons” standard and should be sealed, because revealing that information would
 22 allow competitors to obtain commercial advantages or be used by unscrupulous hackers to
 23 circumvent the publisher’s technological security measures. *E.g., Philips North America, LLC v.*
 24 *Summit Imaging, Inc.*, Case No. C19-1745-JLR, 2021 WL 1895836, * 2 (W.D. Wash. 2021);
 25 *Genuine Enabling Tech., LLC v. Nintendo Co, Ltd.*, Case No. C19-000351-RSM, 2020 WL
 26

1 4366181, at *1 (W.D. Wash. July 30, 2020); *In re Google Inc. Gmail Litig.*, No. 13-MD-02430-
 2 LHK, 2013 WL 5366993, at *3 (N.D. Cal. Sept. 25, 2013).

3 Larsen and the Wallhax Enterprise developed various Cheats for Bungie's *Destiny 2*
 4 game that allow players to see other players through obstacles, shoot through obstacles, have
 5 perfect aim, and generally disrupt the game to the advantage of those who employ the Cheats.
 6 The portions of the Motion and Declarations that Bungie seeks to seal reveal technical details of
 7 both how the Cheats were able to successfully compromise the *Destiny 2* program and what
 8 measures Bungie has in place to combat cheating. As explained in the accompanying
 9 Declaration of James Barker, allowing such details to enter the public domain would simply
 10 allow others to pick up on Larsen's work and propagate further illegal cheats. Revealing such
 11 information in a public filing would not only allow competitors insight into Bungie's security
 12 measures, but would also allow new cheat software developers to replicate or even improve on
 13 the Cheats. That is a sufficiently compelling reason to keep the referenced material under seal.
 14 Bungie has publicly filed redacted copies of the materials, which is sufficient to meet the
 15 public's interest in knowing the non-confidential details of these proceedings.

16
 17 DATED this _____ day of _____, 2023.

18
 19 _____
 20 Tana Lin
 UNITED STATES DISTRICT JUDGE

Presented by:

By: s/ Brian W. Esler

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